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May 3, 2004

Docket Management Facility  
(USCG-2003-14472 and MARAD-2003-156171)  
U.S. Department of Transportation  
Room PL-401  
400 7<sup>th</sup> Street, S.W.  
Washington, DC 20590-0001

<http://dms.dot.gov>

Re: Vessel Documentation: Lease Financing for Vessels  
Engaged in Coastwide Trade; Second Rulemaking  
(USCG Docket 2003-14472 and MARAD Docket 2003-15171). - 25

Dear Madam or Sir:

The following comments are being filed by Lafarge North America Inc. ("Lafarge") in response to the joint notice of proposed Second Rulemaking dated February 4, 2004.

*1.0 Background: Content of February 4<sup>th</sup> Publication.*

U.S. Coast Guard ("Coast Guard") and Maritime Administration ("MARAD") regulations dealing with the citizenship issues in the documentation and chartering of vessels financed under 46 U.S.C. 12106(e) were published in the Federal Register on February 4, 2004. The publication included Coast Guard final regulations for Coast Guard Docket No. 2001-8825 (the "Final Regulations") that set out the agency's conclusions as the result of the 33 month rulemaking in Docket 2001-8825, and the initiation of a new Second Rulemaking, Docket 2003-14472 (the "NPRM" or "Second Rulemaking") that proposes regulations that will deal with three issues that remained unresolved under Docket 8825. MARAD's new rulemaking in Docket 2003-15171 ("MARAD Proposed Regulations") proposes the partial withdrawal of MARAD's current advance general approval of time charters to non-citizens, and would require MARAD review of all charters in 12106(e) non-citizen charter-back transactions.

*2.0 Our Comments in Summary*

Lafarge believes that Section 12106(e) was intended to provide U.S. citizen operators with access to non-citizen financing sources for leveraged lease financing transactions. The section contains a number of protections to ensure U.S. citizen control of the leased vessels consistent with the section's purpose. Transactions under 12106(e) are also subject to the provisions of sections 2 and 9 of the Shipping Act, 1916 (Title 46 App, sections 802 and 808), which prohibit any transfer of control of a U.S. vessel to a non-citizen.

In this Second Rulemaking, the Coast Guard proposes to develop an entirely new set of control standards for use under 12106(e) which the Coast Guard would substitute for the existing Title 46 standards which MARAD administers under sections 2 and 9. This Coast Guard proposal would effect a partial repeal of sections 2 and 9, and would for the first time involve the Coast Guard in control decisions under Title 46 that have been assigned to MARAD since the passage of the 1916 Act. It would complicate the administration of control determinations under 12106(e) and frustrate the section's purpose. Lafarge believes that this assertion of Coast Guard authority would go far beyond what the Congress intended in 12106(e) and would be unlikely to survive almost certain legal challenge.

Lafarge suggests that the subjects addressed in the Second Rulemaking would be best dealt with by limiting the Coast Guard's responsibilities to determine non-citizen compliance with the qualifications for ownership and the grandfather rights under 12106(e), and assigning to MARAD the responsibility for the resolution of control issues involved in non-citizen chartering. We offer factual and legal analyses supporting this division of responsibilities, and then provide substantive comments concerning the subject matters at issue in Coast Guard Docket 2003-14472 and MARAD Docket 2003-15171.

We will begin our comments with a brief review of the Shipping Act, 1916, the way in which non-citizen U.S. flag vessel lease financing transactions were structured following the passage of the Merchant Marine Act of 1970, and of what we believe was intended in the Coast Guard Authorization Act of 1996.

### *3.0 Statutory Authority & Lease-Financing in the Coastwise Trades.*

#### *3.1 The Shipping Act of 1916.*

The Shipping Act of 1916 ("1916 Act") was put in place to ensure the ownership and control of U.S. flag vessels would remain in the hands of U.S. citizens. Section 2 of the 1916 Act defines the U.S. citizenship requirements. Section 9 requires that MARAD approve all transfers by U.S. citizens of interests in U.S. flag vessels to non-citizens, so that ownership and control of these vessels will remain with U.S. citizens as defined in section 2. Time charters to non-citizens require MARAD approval. From 1916 until 1992, MARAD required the submission of time charters for review prior to MARAD approval. These time charter submissions were eliminated in 1992, when MARAD issued a so-called "advance general approval."

#### *3.2 Vessel Lease Financing under the 1970 Act.*

In the decade following the passage of the Merchant Marine Act of 1970 ("1970 Act") non-citizen lease financing played a role in the construction of over \$1 billion in U.S. flag tonnage for operation in the U.S. foreign and domestic trades. In these transactions, the U.S. flag vessels were owned by a leasing company affiliate of a section 2 citizen parent such as Citibank or General Electric, demised to affiliate of a section 2 citizen operator like Marine Transport Lines or Keystone, and time chartered to a non-citizen end user such as Shell or BP. All of these non-citizen time charters were reviewed and approved by MARAD under sections 2 and 9. The MARAD charter order approvals were relied upon by financing counsel in providing transaction opinions or citizenship issues.

#### *3.3 Vessel Lease Financing under the 1996 Act.*

The Coast Guard Authorization Act of 1996 ("1996 Act") amended the statute governing vessel endorsements by adding a new subsection 12106(e) which permits non-citizen ownership of these vessels so long as: 1. the non-citizen owner (or its parent or a subsidiary of its parent) is "primarily engaged in leasing or other financing transactions;" and 2. the vessel is demised to a U.S. citizen operator entitled to engage in the coastwise trade, and the demise charter is for a period of at least three years, or a shorter approved period. Section 12106(e) was intended to provide U.S. citizen operators with access to non-citizen capital to craft leasing financing transactions similar to those of the 1970 Act period. The non-citizen lesser would now be qualified to be a vessel owner, functioning just as the section 2 citizen owners had functioned in 1970 Act transactions.

The NPRM states that since 1996 some 87 entities have applied to document and enroll a vessel using 12106(e). In 30 of these transactions, non-citizen members of a non-citizen affiliated group were both the owner and the time charterer of the vessel. The non-citizen participants in these "charter-back" transactions believed, on the basis of advice from the Coast Guard and maritime financing counsel, that these transactions were authorized by 12106(e). However, some U.S. citizen owners and operators did

not. The development of a set of Coast Guard regulations that would resolve this disagreement and govern these and other transactions authorized by 12106(e) became the subject of the formal rulemaking proceeding in Coast Guard Docket No. 2001-8825.

#### *4.0 USCG Docket 2001-8825.*

Coast Guard Docket No. 2001-8825 was opened on May 2, 2001 with a closing date for comments of September 4, 2001. It was reopened on December 14, 2001. A supplemental notice was published on August 2, 2002. As of February 4, 2004, over the course of its 33 months, Docket 8825 had attracted approximately 140 docket entries. Over the course of this period, there was no narrowing of the disagreement between the non-citizen vessel owners and the U.S. citizen vessel owners and operators over the legality of the charter-back arrangements.

#### *5.0 The Coast Guard Second Rulemaking.*

The Second Rulemaking, Docket 2003-14472, proposes regulations that will deal with three subject matters that the Coast Guard has characterized as remaining unresolved under Docket 8825:

- (i) The regulation or prohibition of "charter-back" transactions where the non-citizen vessel owner and vessel time charterer are both members of the same non-citizen affiliated group;
- (ii) The "grand-fathering" rights of parties to existing charter-back and other transactions that will not be in compliance with the Coast Guard's new documentation and chartering rules; and
- (iii) The Coast Guard need for expert review of applications for documentation as an aid to Coast Guard enforcement of its ownership and chartering requirements.

Our comments will address these three Second Rulemaking subject matters before turning to MARAD Docket 15171. Our discussion will commence with an examination of the first and third subject matters, the Coast Guard regulation or prohibition of charter-back transactions, and the Coast Guard need for expert assistance, before turning to the very important newly proposed "grandfather" rules.

The Coast Guard explains at length the difficulties that it now encounters in its attempt to resolve charter-back control problems under 12106(e), and the need employ the charter party expertise and citizenship control standards currently available to MARAD as a result its years of experience with section 2 and 9 administration. We believe that this Coast Guard explanation (admission) fully illustrates and supports the desirability of limiting the Coast Guard's responsibilities in the charter-back situation to the qualifications for ownership and the grandfather rights under 12106(e), and of assigning to MARAD the sole responsibility for the resolution of control issues involved in charter-back and other follow-on non-citizen chartering.

#### *5.1 Charter-back Restrictions: Per Se Alternatives 1 & 2.*

Lafarge believes that: 1. the Coast Guard proposed *per se* prohibitions will prevent legitimate U.S. citizen operator lease financing transactions that would not be disallowed under the control standards of sections 2 and 9 of the 1916 Act; 2. Title 46 has assigned the regulation of transfers of control through contractual arrangements to MARAD under sections 2 and 9; 3. this regulation is better suited to MARAD case-by-case resolution under sections 2 and 9, rather than Coast Guard blanket prohibitions under 12106(e); 4. the Coast Guard *per se* rules would be a mistake as a matter of 12106(e) administration, and would not withstand legal challenge under the governing law; and 5. the public should not be asked to assist the Coast Guard in developing an entirely new set of control standards to supplement or replace existing MARAD standards that cover the same subject matter.

The Coast Guard proposes two charter-back amendments to the Final Regulations. While called "alternatives," these amendments are in fact independent proposals, either or both of which might be adopted.

Alternative 1 proposes the amendment of 67.20(a)(6) to extend the "primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels" test, so as to include any "member of the group of which the owner is a member." As the Coast Guard explains this provision "it would prohibit the demise charterer from sub-chartering [the vessel] back to a member of the owner's group." Alternative 2 would prohibit all charter-backs except when the vessel is engaged in carrying cargo owned by the vessel's owner or by a member of the vessel owner's group.

Alternatives 1 and 2 are identical in prohibiting all charter-back arrangements (for all non-citizen groups) and only differ in their single situation exceptions. Alternative 1 would prohibit all charter-backs except where "the charter-back arrangement is merely for providing a legal framework under which the vessel will earn revenue," and in which "the demise charterer retains all aspects of control of the operation of the vessel other than that which is directly involved in generating revenue." Alternative 2 would prohibit all charter-backs "except when the vessel is engaged in carrying cargo owned by the vessel's owner or by a member of the group of which the vessel owner is a member and is not carrying cargo for any other entity."

Alternatives 1 and 2 are blanket provisions that would apply to all non-citizen affiliated groups, subject only to the proposed "financing" and "proprietary cargo" exceptions. In legal terminology, they are *per se* prohibitions. The charter-back arrangement is of itself, and without regard to any transfer of control or other facts, to be prohibited. Lafarge believes that such *per se* rules are a mistake as a matter of 12106(e) administration, and that they cannot be sustained as a matter of law.

In its discussion of the "financing exception," the Coast Guard admits that the proposed regulation itself "does not contain any criteria by which the Coast Guard is to make a determination" on either the "financing" or "control" issues. The Coast Guard acknowledges that it is currently unable to make informed determinations on either issue itself, and requests public comments that will provide the Coast Guard "with an informed basis for making these determinations." In the Coast Guard discussion of the "proprietary cargo" exemption, the exemption is justified on the basis that it is "similar in principle to the Bowaters amendment. . . [and] consistent with what Congress authorized in the past as a limited exception to the Jones Act."

Turning first to the "financing exemption," the Coast Guard expresses the "hope that your comments to this NPRM and comments offered during the public meeting will provide us with an informed basis for making these determinations," and ends with a plea for assistance. "If you believe that there is a more effective way to ensure that control of the vessel is not returned to the owner's group through a charter-back arrangement please tell us."

Alternative 2 proposes a "proprietary cargo" exception. Lafarge applauds the Coast Guard's reliance on the "proprietary cargo" exception of the Bowaters amendment as a means for affording some relief from the *per se* prohibition under Alternative 2. We believe that an exception for vessels that are primarily engaged in the carriage of the owner's cargo is appropriate and highly desirable. There may be practical problems with this "proprietary cargo" approach. As an example, we understand that crude petroleum is often sold in route. A group owned vessel leaving Valdez with group owned cargo may find itself delivering owned cargo by a second group to a refinery owned by a third group located on Puget Sound. If *per se* rules are maintained, accompanied by a "proprietary cargo" exception, a variety of problems must be addressed. In this event, a rule limiting the annual carriage of non-proprietary cargoes to perhaps 30 percent (and requiring carriage of some preponderant percentage of "proprietary cargo" such as 70 percent) may offer the best practical solution.

However, in Alternative 2, just as was the case with the "financing" and "control" exemption standards proposed for Alternative 1, the Coast Guard has acknowledged that it does not know how to define the "proprietary cargo" exception standard and has requested industry assistance in developing such a standard during the course of the Second Rulemaking.

The basic problem here is with the *per se* prohibition of charter-back arrangements themselves, and not with one form or another of exception. These Coast Guard proposals rely upon blanket characterizations of intra-group sub-charters as *per se* transfers of "impermissible" measures of "control" to non-citizen persons. Almost any charter will transfer some measure of "control." But, in a specific transaction, is the measure "impermissible?" Does 12106(e) authorize Coast Guard regulation of sub-charters (and the prohibition of some sub-charters), and if it does, what standards are to be applied? What language in 12106(e) provides the Coast Guard with the authority to prohibit a sub-charter involving a non-citizen group member? What language in 12106(e) authorizes the Coast Guard to impose such a prohibition, while at the same time allowing a sub-charter to a non-citizen that is not a group-member? How can such a distinction be supported without any examination of the specifics of the chartering arrangements? The Coast Guard has neither the current staffing nor the existing expertise necessary to conduct case-by-case examinations. And, the Coast Guard has other responsibilities including Homeland Security.

The Coast Guard proposes to obtain the knowledge required to develop the control standards necessary to administer these *per se* prohibitions by means of the Second Rulemaking. Is the public being asked to engage in this Second Rulemaking to assist the Coast Guard in developing a body of knowledge and standards concerning control which already exists at MARAD? Or are we being asked to assist in developing an entirely new set of Coast Guard control standards? Lafarge must ask whether these control issues are in fact best resolved by the Coast Guard's use of *per se* rules and newly developed control standards, or through MARAD's examination of charters on a case-by-case basis, and the use of the existing control standards developed by MARAD over its years in the administration of its Title XI program and sections 2 and 9?

Lafarge opposes the continuation of this Second Rulemaking for the purpose of assisting the Coast Guard in developing an entirely new set of Coast Guard control standards that appear to be intended to supplement or replace existing MARAD standards that govern the same subject matter.

### *5.2 Coast Guard needs for Accounting & MARAD Advice*

Here, the Coast Guard seeks comments concerning the agency's use of expert advice on two very different sets of questions. The first set involves the desirability of accounting and financial advice in determining whether: 1. the application (or its sub-group or group) will be qualified under the 12106(e) "primarily engaged in leasing and other financing transactions" test; and 2. the applicant will not qualify under Coast Guard rules because it has more than "only a financial investment interest in the vessel," or (under the applicant, parent, group, etc., tests) because it is "primarily engaged in vessel operations and management" tests, to own a vessel entitled (if the vessel meets the other requirements) to a coastwise endorsement. The second set involves an examination of whether (the owner having proven qualification and the vessel having achieved the coastwise endorsement) the subsequent U.S. citizen on-chartering of the vessel to a non-citizen will result in an impermissible transfer of control to a non-citizen.

The answers to the first set of questions require Coast Guard determinations concerning the qualifications of a non-citizen (and its sub-group, parent and group, etc.) for ownership of a vessel to be documented under 12106(e), and are governed by the terms of that section. The answers to the second set of questions require MARAD determinations concerning a citizen vessel charterer's transfer of control of a vessel to a non-citizen and are governed by the 1916 Act's sections 2 and 9.

### *5.3 Accounting Advice*

The Coast Guard discussion at Fed. Reg. 5397 explains that "We intend to rely primarily on the certifications of the applicant because the applicant is the best able to know whether the entire group is primarily engaged in the operation and management of commercial foreign flag vessels. However, we reserve the right to investigate further when circumstances warrant. In this regard we may use all available sources of information....As discussed in the separate NPRM...we may also require that an independent auditor having expertise in marine financing and operations certify that the applicants operations conform to the requirements of the applicable regulations." And, later, on the same page the Coast Guard states:

"We believe that the use of certification is a cost effective way for the vessel owner to establish that it is qualified for a coastwise endorsement under the lease-financing provisions. While the Director of the National Vessel Documentation Center may request that the owner submit additional documentation supporting the certification, for many owners, the certification will be all that is required."

And, the Coast Guard notes that it now proposes to subject any false statements to the criminal penalties imposed under 18 U.S.C. 1001.

Lafarge believes that self-certification is, as the Coast Guard discussion appears to confirm, the proper means for establishing 12106 (e) ownership qualifications. The addition of the penalties imposed under 18 U.S.C. 1001 appears appropriate, and should ensure the accuracy of 12106 (e) filings. Any requirement for "a certification from an independent auditor" would, as the Coast Guard acknowledges, "add time and cost" to the process of preparing an application, which Lafarge believes should be avoided. Lafarge believes that the Coast Guard should rely on the certifications of the vessel owner to establish that it is qualified for a coastwise endorsement under 12106(e).

### *5.4 MARAD Advise.*

In the Second Rulemaking initial discussion of the MARAD advise issues, the Coast Guard states that "MARAD's review of charter arrangements in the limited circumstances where the time charterer is related to the non-citizen vessel owner will ensure that U.S. Citizens maintain control over vessels operating in the coastwise trade." Thus, the Coast Guard acknowledges MARAD's expertise as controlling on the issue of U.S. citizen control for purposes of sections 2 and 9. However, according to the Second Rulemaking text, MARAD's role is only to examine charters and advise the Coast Guard as to whether MARAD believes that the charters will affect a transfer of control under those sections.

Will the Coast Guard accept MARAD's advice concerning sections 2 and 9 as binding on the issue of control for purposes of 12106(e)? Or will this simply be a factor to be considered by the Coast Guard in formulating and imposing its own new, independent 12106(e) standard for "control"? Why is MARAD's advice on these control issues merely advisory rather than being binding? Lafarge believes that there should be only one set of standards for U.S. citizen control, not two, and that MARAD's established standards should apply. Lafarge believes that the development of an entirely new set of Coast Guard control standards for use in 12106(e) financing transactions is neither appropriate as a matter of sound administration policy, nor sustainable as a matter of law. Lafarge has already stated its opposition to the continuation of the Second Rulemaking for the purpose of developing such a set of Coast Guard standards.

### *6.0 Grandfather Provisions*

Lafarge believes that the Coast Guard should grandfather existing vessel transactions on the basis of the vessel's qualification for coastwise endorsements for the vessel's life, so long as its owner

continues to be qualified under 12106(e) as that section was interpreted by the Coast Guard on the date that the vessel financing transaction was fixed, and furthermore that the Coast Guard should continue to make 12106(e) available on this same basis for the financing of Lafarge's fleet replacement vessel needs.

The "grandfather" provisions in the Coast Guard Final Regulations allow vessels with endorsements issued before February 4, 2004 to operate (with certain specified exceptions) under that endorsement and renewal endorsements indefinitely. We understand that this would contemplate the vessel's qualification for coastwise endorsements for the vessel's life, so long as its owner continued to be qualified under 12106 (e) as that section was interpreted by the Coast Guard on the date that the vessel financing transaction was fixed. We assume that this date might be evidenced by a Coast Guard letter ruling or an opinion of maritime financing counsel or on some other reasonable basis.

Lafarge believes that the Coast Guard's Final Regulations on this "grandfather" issue should not be modified in the fashion that is now proposed. Federal agency rulings and letter interpretations are issued to provide the certainty of law necessary to important and costly private sector transactions. These agency interpretive rulings are intended as authoritative statements of the agency's views concerning the governing law. They are issued to encourage and facilitate private sector transactions that will be accomplished in accordance with their terms. In U.S. government operations and federal agency practice, ruling letters and other written interpretations are customarily honored by the issuing agency. An agency's failure to honor its issued advice brings the agency's entire advisory process into question. It robs agency rulings and interpretive pronouncements of credibility, and destroys the agency's ability to facilitate desirable private sector transactions which depend upon certainty of governing law.

Almost eight years elapsed between the 1996 enactment of 12106(e) and the issuance of Coast Guard interpretive regulations on February 4, 2004. As the Coast Guard itself acknowledges, the very important charter-back and grandfather issues are still not resolved. During this entire period, private sector parties and their counsel wishing to craft ship financing transactions depended upon Coast Guard advice concerning the proper interpretation of 12106(e). Most of the vessel financing transactions involved were necessary at the time they were concluded in order to meet existing or near term U.S. environmental concerns and transportation needs. Most required a perceived legal certainty in crafting their specifics. Had the Coast Guard's advice been different, the transactions would have been crafted to comply with that different Coast Guard advice. Most of the transactions that will be adversely effected will be costly to restructure.

Lafarge believes it to be in the Coast Guard's best interest, as well as that of Lafarge and other 12106(e) participants, for the Coast Guard to grandfather vessel qualifications for coastwise endorsements for the vessel's life, so long as its owner continues to be qualified under 12106(e) as that section was interpreted by the Coast Guard on the date that the vessel financing transaction was fixed. Lafarge believes that any period less than this is "unreasonable." The restructuring of Lafarge's financing transactions will be costly. Lafarge will suffer severe negative impacts in the event of any rule that requires the restructuring of existing vessel financing transactions that were entered on the basis of our reliance on Coast Guard and maritime financing counsel advice.

Lafarge has substantial manufacturing and processing operations in the United States and Canada which require the extensive use of water transport. Many of its' products are moved on U.S. flag vessels by U.S. citizen operators for Lafarge's account. Lafarge's operations support the employment of these U.S. flag vessels. In the Great Lakes markets, Lafarge must compete with Canadian-based corporations that move their products on vessels that these corporations own. Lafarge's continued success in its manufacturing and processing will depend upon Lafarge's ability to maintain transportation costs that are competitive with those of these Canadian owned vessels.

Lafarge has been able to reduce its transportation costs through the use of U.S. flag vessel financing transactions that were structured under 12106(e) based upon Coast Guard letter advice and

opinions of recognized maritime financing counsel. Lafarge views the grandfather of existing transactions and the continuing availability of 12106(e) for Lafarge's vessel replacement needs as highly important to Lafarge's continuing success in its very competitive business environment.

#### *7.0 Maritime Administration Proposed Regulations.*

Lafarge has already stated and explained its support for the position that MARAD should be assigned the responsibility for all non-citizen control chartering issues associated with 12106(e) administration.

The MARAD Proposed Regulations provide that a citizen operating a vessel under a demise charter that is documented under 12106 (e) will be required to obtain the MARAD approval required by sections 2 and 9 prior to any charter-back (or other transfer back) to the vessel owner, or vessel owner group or member or affiliate of the group. Thus, charter-back issues of control will be considered, and charters will be approved or disapproved, based upon MARAD's examination of the facts involved, on a charter-by-charter basis. MARAD is assigned the responsibility for these control determinations under Title 46. MARAD has both the knowledge and developed standards necessary for these determinations as a result of its years of Title XI program and section 2 and 9 administration.

The documentation statutes administered by the Coast Guard, although requiring (until the passage of 12106(e)) that in order to engage in U.S. domestic trades a vessel must be owned by a coastwise qualified U.S. citizen, have never addressed issues related to the chartering of such vessels to non-citizens. Issues related to such chartering are assigned to MARAD jurisdiction under the statutory scheme of Title 46 of the U.S. Code. Lafarge again must inquire as to why MARAD's determinations are merely advisory, rather than being binding for the purposes of 12106(e)?

MARAD leaves untouched the control problems associated with the on-chartering of other 12106(e) to non-citizens in the domestic trades. Why are 12106(e) charter-back arrangements to be examined, while other 12106(e) non-citizen charters are not? MARAD states that they have left this problem unattended because of Docket 12842 opposition to a return to MARAD review of all (foreign as well as domestic trade) time charters. From national security and other standpoints, the control issues for charter-back and other non-citizen charterers under 12106(e) appear to be the same. MARAD's regulations should be revised so as to require the review and approval of all charters to non-citizens for 12106(e) vessels to be operated in the U.S. domestic trades.

#### *8.0 Concluding Thoughts.*

Thirty-three months passed between the initiation of Docket 8825 and the publication of the February 4<sup>th</sup> Final Regulations intended to provide the Coast Guard's standards for vessel ownership under 12106(e). The Final Regulations package is not complete. The charter-back controversy has barely been addressed. We are now being asked to embark upon a lengthy Second Rulemaking to provide the Coast Guard with the knowledge required to develop the standards necessary to make control determinations and administer exceptions to *per se* charter-back prohibitions. The other issues of non-citizen control of 12106(e) vessels in our domestic trades remain unaddressed.

#### *9.0 Lafarge Suggestions & Recommendations*

Lafarge suggests that the time has come to end this 12106(e) rulemaking. The Coast Guard should be considered to have fulfilled its rulemaking role once the qualifications for ownership under 12106(e) have been fixed and the grandfathering limitations agreed upon. Matters concerning non-citizen vessel control achieved through U.S. citizen vessel on-chartering should be for MARAD's examination,



following the procedures and applying the standards that it has developed in its year of control determinations under sections 2 and 9.

Lafarge recommends that:

1. The Coast Guard should be assigned primary responsibility for the review and approval of the qualifications for vessel ownership under 12106(e), including review (in consultation with MARAD) of the demise charters required under that section, and for the administration of 12106(e) grandfather limitations;
2. MARAD should be assigned the primary responsibility for the review and approval of all U.S. citizen charter-back and other non-citizen on-chartering in 12106(e) financing transactions, based upon a transaction-by-transaction review by MARAD (in consultation with the Coast Guard) to confirm compliance with sections 2 and 9;
3. The Coast Guard should grandfather all existing 12106(e) transactions and provide for the continuing qualification of the vessel for coastwise endorsement for the life of the vessel, so long as its owner continues to be qualified under 12106(e) as that section was interpreted by the Coast Guard on the date that the vessel financing transaction was fixed, and that the Coast Guard should continue to make 12106(e) available to the same owners on the same basis for the financing of fleet replacement vessels;
4. The Coast Guard should rely upon vessel owner self certification for purposes of 12106(e); and
5. The current Second Rulemaking efforts in Coast Guard Docket 2003-14472 and MARAD Docket 2003-15171 should be redirected along these lines and brought to prompt conclusions.

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Lafarge depends upon the availability of efficiently operated U.S. flag vessels to meet the transportation needs associated with its manufacturing and production operations. Lafarge has provided the financial support necessary for the construction and operation of U.S. flag vessels designed to meet these needs by providing long term financing charters, and by the direct investments authorized by 12106(e). Lafarge wishes to work with the Coast Guard and MARAD in seeking ways to continue and facilitate Lafarge's support for these important U.S. flag vessel operations.

We appreciate this opportunity to submit our Lafarge North America Inc. views on the Second Rulemaking subject matters for your consideration.

Respectfully submitted,

Lafarge North America Inc.



Alan Van Sloten

AVS/drij

CC: H. Clayton Cook Jr.